

SEP 14 2007

AB-308U

10/731,551

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Patent Application of

Todd K. Whitehurst et al.

Application No. 10/731,551

Filed: December 8, 2003

For: Fully Implantable Miniature
Neurostimulator for Intercostal
Nerve Stimulation as a Therapy
for Angina Pectoris

Group Art Unit: 3762

Examiner: EVANISKO, George Robert

RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

On September 18, 2006, the Examiner issued a paper styled "Request for Information" (the "Request") in the above-identified patent application. The Examiner renewed that request in a subsequent paper of February 22, 2007. In an attempt to further the prosecution of this application, Applicant hereby suspends the Notice of Appeal filed in this case pending further

AB-308U

10/731,551

action from the Examiner and provides the following full and timely response to the "Request for Information."

According to the Request, the "examiner is requiring the Applicant to state on the record what nerves the applicant considers the intercostal nerve branches to consist of. ... This information is required to extend the domain of search for prior art." (Request, p. 2).

In response, Applicant has attached a number of reference documents which provide detailed information on what nerves are customarily considered to be the intercostal nerve and nerve branches in the art. As Applicant has stated previously, the terms "intercostal nerve" and "intercostal nerve branches" recited in the claims are to be understood as defined in the originally filed specification and to refer to those nerves that were so identified in the ordinary and customary terminology of the art at the time of the invention. It is believed that the attached reference material will fully inform the Examiner of how these terms are understood both in Applicant's specification and claims and among those of ordinary skill in the art.

Applicant does note, however, that the references attached are the best Applicant could identify at the present time. Applicant makes no representation that any of the references attached represents prior art or was available at the time of Applicant's invention.

Given the information filed with this response, Applicant requests that, when examining the claims of this application, the Examiner rely on the definition of the term "intercostal nerve" or "intercostal nerve branches" as provided in Applicant's specification and, to the extent not inconsistent with that definition, the ordinary and customary meaning in the art at the time of the invention.

AB-308U


10/731,551

The Request also requests "a list of keywords that are particularly helpful in locating publications related to the disclosed art of stimulating intercostal nerves and intercostal nerve branches." (Request, p. 3). Specifically, the Examiner appears to want the names of specific intercostal nerves and nerve branches. Applicant believes that any such keywords the Examiner may wish to use in searching, including the names of specific intercostal nerves and nerve branches, will be readily available in the attached material which describes, in great detail, the intercostal nerves and branches using standard medical names and terminology.

Lastly, the Request asks that Applicant provide copies of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter. (Request, p. 3). This amounts to nothing more than a request that Applicant fulfill the Duty of Disclosure under 37 C.F.R. § 1.98. Applicant has already complied with this rule and has nothing further to add at this time.

Respectfully submitted,

DATE: September 14, 2007


Steven L. Nichols
Registration No. 40,326

Steven L. Nichols, Esq.
Managing Partner, Utah Office
Rader Fishman & Grauer PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, Utah 84095
(801) 572-8066
(801) 572-7666 (fax)

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number **571-273-8300** on **September 14, 2007** Number of Pages: **84**


Rebecca R. Behow